

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

ROBERT E. DIETRICH,)	
)	
PETITIONER,)	
)	
vs.)	CAUSE No. 3:10-CV-84-RLM
)	(ARISING OUT OF 3:09-CR-25)
UNITED STATES OF AMERICA,)	
)	
RESPONDENT.)	

OPINION and ORDER

In April 2010, the court denied Robert E. Dietrich's 28 U.S.C. § 2255 motion. The court denied his notice of appeal, construed as a motion for certificate of appealability, his later motion for certificate of appealability, and his motion to proceed on appeal *in forma pauperis* because the appeal wasn't taken in good faith. The court of appeals found no substantial showing of the denial of a constitutional right and denied Mr. Dietrich's request for a certificate of appealability and his motions to proceed *in forma pauperis* and for appointment of counsel. In 2012, Mr. Dietrich filed a second motion pursuant to 28 U.S.C. § 2255. That motion was filed without a certificate of appealability, so the court denied the motion as not properly before the court.

In late 2013, Mr. Dietrich filed a third 28 U.S.C. § 2255 motion that he characterized as a motion pursuant to Federal Rule of Civil Procedure 60(b)(6) to vacate the court's judgment denying his original § 2255 motion. Mr. Dietrich's motion again hadn't been certified by the court of appeals, and consequently the court dismissed the motion. He now wants to appeal that

decision. Mr. Dietrich has filed an affidavit that accompanies a motion for permission to appeal *in forma pauperis* that the court construes to be a motion for leave to appeal *in forma pauperis*.

Federal Rule of Appellate Procedure 24(a)(3) provides that a financially indigent person can be permitted to proceed on appeal *in forma pauperis* unless the court “certifies that the appeal is not taken in good faith.” In other words, the court must determine “that a reasonable person could suppose that the appeal has some merit.” Walker v. O’Brien, 216 F.3d 626, 632 (7th Cir. 2000). For the reasons stated in the court’s dismissal of the Rule 60(b)(6) motion, no reasonable person could find that Mr. Dietrich’s appeal has merit. The appeal isn’t taken in good faith, and Mr. Dietrich’s motion for leave to proceed on appeal *in forma pauperis* is DENIED (Doc. No. 136).

SO ORDERED.

ENTERED: April 4, 2014

 /s/ Robert L. Miller, Jr.
Judge
United States District Court